

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1306 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

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FULWA ALIAS FULMATTIBEN

W/O RAMESH KHUSHALBHAI KAHAR

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 1306 of 2001

Ms. Sejal Sutaria for MR UI VYAS for Petitioner No. 1

Mr. H.L. Jani AGP for Respondent No. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 18/07/2001

ORAL JUDGEMENT

Heard learned advocate Ms. Sejal Sutaria for the petitioner and the learned AGP Mr. Jani for the respondents. In this petition under Article 226 of the the Constitution of India, the petitioner has challenged the impugned order of detention dated 28th December, 2000 passed by the detaining authority whereunder the petitioner has been ordered to be detained at the

Sabarmati Central Prisons, Sabarmati, Ahmedabad Jail as Class II detenu. According to the grounds of detention communicated to the petitioner, in all, four offences have been registered against the petitioner wherein last offence registered is dated 19.9.2000. The statements of the secret witnesses recorded on 8.12.2000 and 9.12.2000 were verified by the detaining authority on 28.12.2000. As per the grounds of detention communicated to the petitioner, the petitioner has been involved in two unregistered offences dated 25.11.2000 and 22nd October, 2000. Representation has been made by the petitioner on 15.1.2001 wherein demand for supply of certain documents was made by the petitioner. Contention about delay in passing the impugned order of detention has also been raised. In para 15 of the petition, contention about non supply of the document has been raised by the petitioner. The respondents have not filed any reply to the present petition.

2. Learned advocate Ms. Sutaria appearing for the petitioner has raised various contentions challenging the impugned order of detention. However, according to her, one contention is enough to vitiate the impugned order of detention. She has submitted that looking to the facts on record, considering the date of the last registered offence which is 19th September, 2000, the impugned order has belatedly been passed by the respondents and such delay has not been explained by the respondents by filing the affidavit in reply and, therefore, according to her, on this sole ground, the petition is required to be allowed by quashing and setting aside the impugned order of detention. She has further submitted that if the involvement of the petitioner in the alleged unregistered offence is concerned, the last unregistered offence is dated 25th November, 2000 and the impugned order of detention has been passed on 26th December, 2000 and if viewed from this angle, then also, there is delay of more than month and such delay has not been explained by the authority and, therefore, in view of such unexplained delay in passing the impugned order of detention, the impugned order of detention is required to be quashed and set aside. She has submitted that it is the duty of the detaining authority to satisfy himself by recording subjective satisfaction about compelling circumstances to immediately detain the person by passing the detention order which is having proximity and necessity to pass an immediate order of detention and in absence of that, when there is delay in passing the impugned order of detention, same is required to be explained by the detaining authority. The next contention raised by her is about the representation made by the petitioner on

15th January, 2001. She has relied upon the white slip for sending the representation by RPAD to the respondents wherein certain documents were demanded by the detenu. However, according to her, no reply has been given by the detaining authority in respect of the demand made by the petitioner in his representation. In support of her contentions, she has placed reliance on the decisions reported in 1997 (1) GLH 381; 1991 (1) GLH 346 and 1990(2) SCC page 1.

Learned AGP Mr. Jani has submitted that looking to the material on record and considering the facts of the case, there were compelling circumstances for passing the impugned order of detention and, therefore, according to him, the impugned order of detention is legal and valid and this court is not required to interfere with the same.

Looking to the date of the last offence registered against the petitioner and also the involvement of the petitioner in unregistered offence and considering the date of the impugned order of detention, as per my view, there is delay of about more than three months in passing the impugned order of detention from the date of the last offence registered against the detenu which has not been explained by the detaining authority. As per the grounds of detention, the petitioner has been involved in two unregistered offences. The date of such last unregistered offence is 25th November, 2001. If that is taken into consideration, then also, there is delay of about month or so in passing the impugned order of detention which too has remained unexplained by the respondents.

In case of Elesh N. Patel versus Commissioner of Police, Ahmedabad, this Court has held as under in para 21 of the report :

"21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 5, 1996 i.e. after a delay of five months and fifteen days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been

registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the supreme court in Anand Prakash v. State of UP reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S. Ramamurthy reported in 1993(2) Suppli. SCC 61."

As regards the second contention about non consideration of the representation dated 15th January, 2001 and also about the non supply of the documents demanded by the petitioner under the said representation, specific contention to that effect has been raised in para 15 of the petition that the documents demanded by the petitioner were not supplied by the respondents. According to my view, it would amount to non communication of the grounds and would violate the mandate given under Article 22 (5) of the Constitution of India. The view taken by the apex court in this regard in 1990(2) SCC 1 is material. Para 19 and 20 of the report are reproduced as under:

"19. The next submission is that of non-supply of bail application and the bail order. The Court, as was observed in Mangalbhai Motiram Patel v. State of Maharashtra, has 'forged' certain procedural safeguards for citizens under preventive detention. The constitutional imperatives in Article 22(5) are twofold : (1) The detaining authority must, as soon as may be, i.e. as soon as practicable, after the detention communicate to the detenu the grounds on which the order of detention has been made, and (2) the detaining authority must afford the detenu the earliest opportunity of making the representation against the order of detention. The right is to make an effective representation and when some documents are referred to or relied on in the grounds of detention, without copies of such documents, the grounds of detention would not be complete. The detenu has, therefore, the right to be furnished with the grounds of detention along with the documents so referred to or relied on. If there is failure or even delay in

furnishing those documents, it would amount to denial of the right to make an effective representation. This has been settled by a long line of decisions : Ramachandra A. Kamat v. Union of India; Frances Coralie Mullin v. W.C. Khambra, Ichhu Devi Choraria v. Union of India; Pritam Nath Hoon v. Union of India; Tushar Thakkar v. Union of India; Lallubhai Jogibhai Patel v. Union of India; Kirit Kumar Chaman Lal Kundaliya v. Union of India; and Ana Carolina D'Souza v. Union of India.

20. It is immaterial whether the detenu already knew about their contents or not. In *Mehrunnisa v. State of Maharashtra*, it was held that the fact that the detenu was aware of the contents of the documents not furnished was immaterial and non-furnishing of the copy of the seizure list was held to be fatal. To appreciate this point, one has to bear in mind that the detenu is in jail and has no access to his own documents. In *Mohd. Zakir v. Delhi Administration*, it was reiterated that it being a constitutional imperative for the detaining authority to give the documents relied on and referred to in the order of detention *pari passu* the grounds of detention, those should be furnished at the earliest so that the detenu could make an effective representation immediately instead of waiting for the documents to be supplied with. The question of demanding the documents was wholly irrelevant and the infirmity in that regard was violative of the constitutional safeguards enshrined in Article 22(5)."

Therefore, in the facts of the present case and also in view of the aforesaid decision in case of *Elesh N. Patel* (supra), considering the unexplained delay of about three months in passing the impugned order of detention, and also considering the non supply of the documents to the petitioner which were demanded as per representation dated 15.1.2001 and also in light of the observations made by the apex court in the aforesaid decision, the impugned order of detention is required to be quashed and set aside.

In the result, this petition is allowed. Impugned order of detention dated 28th December, 2000 passed by the detaining authority is quashed and set

aside. The petitioner detenu Fulva alias Fulmatiben, wife of Rameshbhai Khushalbhai Kahar who has been detained in Sabarmati Jail Ahmedabad is ordered to be released forthwith if she is not required in any other case. Rule is made absolute accordingly with no order as to costs. DSP.

18.7.2001. (H.K.Rathod, J.)
Vyas